

**BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001**

Retail Access Optimization Initiative

:

Docket No. N2011-1


**SUBMISSION OF BRIEF ON BEHALF OF ASSOCIATION OF
UNITED STATES POSTAL LESSORS (AUSPL) REGARDING
THE
U.S. POSTAL SERVICE'S RETAIL ACCESS OPTIMIZATION
INITIATIVE**

INITIAL BRIEF

(October 14, 2011)

The Association of United States Postal Lessors (AUSPL) hereby submits
its brief which is attached hereto and incorporated herein and made a part hereof.

RESPECTFULLY SUBMITTED

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RETAIL ACCESS OPTIMIZATION INITIATIVE

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AUSPL BRIEF

I. Introduction

On July 27, 2011, the United States Postal Service (USPS or Postal Service) filed a Request¹ with the Postal Regulation Commission (“PRC”) for an Advisory Opinion as is required by Section 3661 of the Postal Accountability and Enhancement Act (the “Act”) codified at 39 USC §3661. The Postal Service has instituted the Retail Access Optimization Initiative, pursuant to which up to 3,650 of the more than 32,000 post offices, stations and branches in its retail network may be closed. Specifically, the Request asks for the Commission to opine “whether the nature of the service changes expected to result from the Retail Access Optimization Initiative would conform to applicable policies of Title 39, United States Code”.²

Various comments were filed and testimony presented including the testimony of John Klingenberg (PR-2-2) filed by the Public Representative. The National League of Postmasters filed the rebuttal testimony of Mayor Donald Hobbs (NLPM-RT-2). As stated by PRC Commissioner Hammond, no other

¹ The request was accompanied by written testimony of James J. Boldt, Manager, Delivery and Post Office Operations (USPS-2-1)

² Request of the United States Postal Service for an Advisory Opinion on changes in the Nature of Postal Services, page. 2, July 27, 2011

advisory opinion request has generated as many comments and complaints or more questions about the future of people's business dealings with the Postal Service.³

Section 3661(b) of Title 39 states:

When the Postal Service determines that there should be a change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis, it shall submit a proposal, within a reasonable time prior to the effective date of such proposal, to the Postal Regulatory Commission requesting an advisory opinion on the change.⁴

The "change in the nature of postal services which will generally affect service on a nationwide basis" at issue in this case results from the Postal Retail Access Optimization Initiative (the "RAO Initiative" or "Initiative"). The Initiative consists of a centrally directed plan to review post offices and subordinate stations and branches to examine the feasibility of discontinuing operations at up to 3,650 locations.⁵

The Initiative categorizes the postal facilities proposed for closing into four different categories consisting of (i) low workload offices; (ii) stations and branches with insufficient demand and available alternate access; (iii) retail annexes within insufficient demand and available alternate access; and (iv) pending discontinuance actions awaiting public input. The vast majority of post offices considered for closure are in the low workload offices consisting of over 2,800 facilities. These post offices operate at a deficit and provide service to rural Americans.⁶

³ Official transcript of hearings held on September 8, 2011, Docket N2011-1, page 8

⁴ 39 U.S.C § 3661(B)

⁵ Request at page 14.

⁶ Klingenberg testimony page 2

The Postal Accountability and Enhancement Act requires the PRC issue an advisory opinion on whether the Postal Service's ROA Initiative is in compliance with the Act. § 3661(c) of the Act states:

The Commission shall not issue its opinion . . . until an opportunity for a hearing on the record under Sections 556 and 557 of Title 5 has been recorded The opinion shall be in writing and shall include a certification by each Commissioner agreeing with the opinion and that in his or her judgment the opinion conforms to the policies established in this title.

The potential closing of up to 3,650 post offices amounts to a closing of over ten percent (10%) of the retail post offices. By virtue of the fact that over 2,800 of these post offices are in rural locations⁷, the Post Office is closing the only post office facility in the town. Citizens of these rural communities will need to travel to another town in order to get many of the services that are only provided by Postal Service retail locations. Interestingly enough, the Postal Service, before even receiving your decision, has already begun the feasibility studies of closing these post offices.⁸ In fact, theoretically the 3,650 post offices could be closed by December 31, 2011. The number of post offices selected for possible closure is very high and such closures will dramatically affect service on a nationwide basis.

As more fully explained below, AUSPL urges the Commission to issue an advisory opinion finding that the RAO Initiative does not conform to the policies reflected in Title 39. Specifically, the Commission should find the Initiative violates the requirement of the Postal Service not making any undue or unreasonable discrimination among users of the mail and the requirement that the

⁷ Klinkenberg Testimony, page 15

⁸ Boldt testimony page 22

¹⁰ Boldt testimony pp 14-15

Postal Service provide a maximum degree of effective and regular postal services to rural areas, communities and small towns where post offices are not self sustaining.

II. The Initiative Violates Section 101(b) and Section 403(c) of the Act.

Section 101(b) of the Act mandates that "the Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, in small towns where post offices are not self sustaining. No small post office shall be closed solely for operating at a deficit, it being a the specific intent of the Congress that effective postal services be ensured to residents of both urban and rural communities." A close review of the postal facilities selected for possible closure it shows that the Postal Service has in fact targeted rural post offices. The very criteria used by the Postal Service, namely that they looked at retail facilities where revenue was no greater than \$27,500, virtually assured that rural post offices will be selected for closure which is directly in conflict with the Act which provides that a small post office shall not be closed solely for operating at a deficit.

Section 403(c) of the Act states that "[i]n providing services . . . , the Postal Service shall not, except as specifically authorized in this title, make any undue or unreasonable discrimination among users of the mail, nor shall it grant any undue or unreasonable preferences to any such user ." The methodology used by the Postal Service, although facially neutral on its face, has a significantly adverse effect on rural post offices. The Postal Service may not have any intention to discriminate against rural post offices, but the methodology used has a highly disparate impact.

In the employment law context, there are numerous cases that have held facially neutral job requirements that have a disparate impact are discriminatory. See Griggs v. Duke Power Co., 401 U.S. 424(1971).

Postal Service testimony provides that the Postal Service has examined earned workload data for each of its retail facilities and identified all offices for which earned workload amounted to less than two (2) hours per day and annual revenue was no greater than \$27,500.00.¹⁰ Based on this criteria, over 2,800 of the 3,650 offices being reviewed for closure were identified.¹¹ This equates to over 75% of the post offices being considered for closure. The Postal Service did not provide enough information to identify whether all these post offices were in rural areas. Nevertheless, 2,059 of these offices can be identified and linked to census blocks to determine whether they are located in rural areas.¹² Of these 2,059 offices, 99.6% serve at least one rural census block.¹³

By utilizing this selection criteria, the Postal Service is targeting rural post offices. By their very nature, rural post offices service a very low population base. As a result, rural post offices have low workloads. The effect of targeting low workload offices, which on its face may appear to be reasonable, is to discriminate against rural post offices and prevents the Postal Service from providing effective service to rural areas. By its very nature, this is discriminatory. It violates both §101(b) of the Act and §403(c) of the Act.

For example, the post offices identified for potential closure under the RAO Initiative are the nearest post offices for only five percent (5%) of the United

¹¹ Id.

¹² Klingenberg testimony page 15

¹³ Id.

States population. On its face, this appears very reasonable. Digging into the facts, however, reveals there are two different reasons for this. Over 2,800 of the offices identified are in rural areas which by the very nature have a very low population base. Therefore, naturally, the percentage will be much lower because there is a much lower population base. Another factor is that the balance of the post offices are located in urban areas and are primarily stations and branches. As a result, the population in these more densely populated areas can easily be linked to other nearby offices.

The Postal Service in its testimony argues that availability of alternate access channels has changed the nature of retail postal services and these alternatives expedite customer access to postal retail transaction that once required a visit to a retail window in a post office.¹⁴ The Postal Service states that the alternate access channels include nearly 2,650 private retail stores that sell postage stamps and 4,300 business that operate as approved shippers and accept packages and other matter for mailing.¹⁵ Unfortunately, the Postal Service does not break down the location of the retail stores or approved shippers. It does not tie-in whether any of these exist in the towns which have rural post offices. Common sense tells you that few, if any, of these private retail stores or approved shippers have locations in small rural towns with populations of less than 200 people. By closing these offices, the Postal Service is effectively eliminating the availability of postal services to rural America.

¹⁴ Boldt testimony pp 4-8

¹⁵ Boldt testimony page 5

These alternative access channels also do not provide all the services provided by a postal facility. For example, one alternative access channel cited by the Postal Service are Village Post Offices. A Village Post Office is far different from an independent post office. An independent post office provides thirty-six (36) different types of products or services, while Village Post Offices would provide only three (3).¹⁶

The Postal Service, in arguing that the alternative access channels can replace the independent post offices, does not consider all of the services provided by an independent post office in a rural committee. Many of these alternative access channels may be very useable and it makes sense for populations that are in cities, but makes very little sense for rural America. Rural America receives many of its medications through the mail (since its is highly unlikely that a CVS or Walgreens will locate in the middle of a town with a population of 1,000 to 2,000 people). The ability to store these medicines in a safe, secure and enclosed environment is essential for the safe delivery of these medicines. Insurance companies often times require signature for the delivery of prescriptions. Delivery to the post office enables a receipt to be signed and thereby enabling delivery.

A rural mail carrier is no substitute for the post office. For example, it would be very difficult for a citizen to purchase stamps, sign for certified mail, or conduct other postal business with the rural mail carrier when he stops at his or her house if that citizen is not at home because he or she is working. Furthermore, there is no evidence in the record to show that the Postal Service has studied what impact the additional time, effort and expense that may be incurred by virtue of

¹⁶ Hobbs testimony pp 5-6

having the rural mail carriers conduct such business. Because of this additional business, will a normal four (4) hour route suddenly takes eight (8) hours?

Although over 2,800 of the post offices are in rural America, what is amazing is that the Postal Service does not even have a definition for rural. In fact, Boldt in his testimony advised that what the Postal Service calls rural route is not necessarily what he would understand to be rural. Title 39 specifically provides that the Postal Service should provide maximum efficient and regular service to rural areas. Yet the Postal Service does not even provide a definition for rural areas. As is evidenced from the Boldt testimony, the Postal Service has not even attempted to determine whether they are fulfilling their obligations under §101(b) of the Act. Before even proposing to close these post offices, the Postal Service should define what is categorized as a rural post office and then determine whether the closure of such rural post offices violates its obligations to provide universal mail coverage.

This Initiative would have a devastating affect on rural America. The citizens of small towns depend on these retail post offices for receipt of their medications through the mail. Retail rural post offices provide the ability for senior rural citizens to travel a short distance to pick up their mail in a safe secure environment; provide assistance to senior citizens to ensure their mail and packages are properly mailed; provide businesses and citizens of rural America the ability to easily mail packages, send registered or certified mail; and unlike alternative access

options, rural post offices provide the ability for rural citizens, many of whom do not have bank accounts, to obtain postal money orders.¹⁷

As can be seen by the testimony of Mayor Hobbs, rural post offices provide a vital link for rural citizens to connect to the outside world and to the federal government. It is a key part of the fabric of their community. The closure of post offices will lead to the demise of many rural towns. In fact, the closing of a post office in Searsboro, Iowa led to the elimination of that town. When the citizens of this community received word that the post office would close, the town lost its identity and unincorporated.¹⁸ This clearly violates Congress' intent set forth in §101(b) of the Act that postal services be ensured to residents of rural communities.

Citizens of rural America, who have high concentrations of vulnerable populations, are far more reliant and dependent upon the post office than other communities. The RAO Initiative disproportionately impacts rural post offices and the citizens of rural America pay for it. The Postal Service should take steps to ensure that rural America is not disproportionately impacted by these closures and that rural America receives effective and regular postal services as required by §101(b) of the Act. Unfortunately, the record evidence does not indicate that any additional steps, studies or information was obtained to measure these consequences and/or to take steps to prevent or ameliorate the adverse impact on rural America. The discriminatory impact of this Initiative is undue and unreasonable.

¹⁷ Id. pp 7-10

¹⁸ Hobbs testimony page 13

III. Cost Savings Does Not Justify Closures

One of the goals of the RAO Initiative is to capture the resulting cost savings if a determination is made to close a postal retail facility.¹⁹ At the same time, the Postal Service has testified that postal management is not pursuing the RAO Initiative in order to achieve any predetermined operating cost savings target in the postal retail network.²⁰ Apparently, the Postal Service is potentially closing numerous post offices for cost savings, but at the same time do not have any predetermined amount of cost savings. It would seem that one of the most important factors you would examine is what amount of savings can be realized, if any, before proposing to close up to 3,600 post offices. Furthermore, §101(b) of the Act specifically provides that no small post office will be closed for operating at a deficit.

Although cost savings is stated as one of their goals, the Postal Service, in its own testimony, has stated that it did not review costs, demographic or operational information before bringing the RAO Initiative to the Commission.²¹ This testimony shows that the Postal Service is requesting a favorable opinion from the Commission with one of its stated objectives is to realize the cost savings from post office closures, but at the same time, have not even determined whether such post office closures will, in fact, result in greater efficiency or cost savings.

Testimony by John T. Klingenberg clearly demonstrates this fact. He testified that out of 2,611 low workload offices, nearly 90% are staffed by only one employee; which means that postal service management does not have the

¹⁹ Request at page 4

²⁰ Boldt testimony page 13

²¹ Docket No. N2011-1, transcript no. 1 at 496

flexibility to use fewer employees to better match work hours to earned workload. Another factor not taken into account is that over 37% of the low workload offices are nodes in the postal services rural carrier network. Closing these offices would have an impact on the transportation network that the postal services uses to get mail to rural carriers and the closure of these offices, may have an impact on the rural carriers that use these offices.

Another factor not analyzed or considered by the Postal Service in this Initiative is the disparate impact that the closing of rural post offices will have on those communities. Assuming *arguendo* that the closing of these post offices will, in fact, produce operational efficiencies and save money, the economic impact on the rural communities would be devastating. By closing post offices in rural towns, the few businesses that exist in those rural towns will likely leave.²² The economic future of rural America would be grim without the post offices.²³

The smallest 10,000 post offices cost 1% of the Postal Service's total operating expenditure.²⁴ The least expensive 10,000 offices cost the Postal Service under \$825,000,000.00 to operate in fiscal year 2010. The total revenue for post offices in fiscal year 2010 was \$65.7 billion.²⁵ At the same time, total operating cost for these post offices was over \$34 billion in fiscal year 2010. This \$34 billion is far greater than the Postal Service's expenditure on rents and retail service employees²⁶ and accordingly, this 34 billion number is very conservative. Even based on these conservative numbers, the total revenue (\$65.7 billion) greatly

²² Hobbs testimony page 16

²³ *Id.*

²⁴ Klingenberg testimony page 16

²⁵ *Id.* page 5

²⁶ *Id.* page 5

exceeds the operating costs for these post offices (\$34 billion). Based on these numbers, the Postal Service has a very profitable retail operation and by reducing the number of retail outlets will reduce the potential for greater revenues. If a post office closes in a small town, people will discontinue using the Postal Service, thereby hastening the revenue losses currently being experienced by the Postal Service.

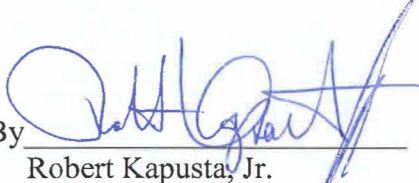
The Postal Service has been in existence since the start of our Country and it is to be operated as a basic and fundamental service provided to people by the government of the United States. It has as its basic function, the obligation to provide Postal Services to bind the nation together through the personal, educational, literary and business correspondence of the people. In light of these facts, the actions of the Postal Service in potentially closing 3,650 postal offices is an over-reaction to the problems currently faced by the Postal Service and has the impact of discriminating against rural America.

IV. Conclusion

For the reasons set forth above, the Commission should find that the RAO Initiative does not conform to the policies of Title 39. The Commission should find that the criteria used by the Postal Service, to determine which post offices to close unreasonably discriminates against users of rural post offices, which is a violation of § 403(c) of the Act. The Commission should also find that the criteria used by the Postal Service targets rural post offices operating at a deficit which is specifically prohibited by §101(b) of the Act.

In addition, the Commission should advise the Postal Service to conduct a thorough demographic, geographic and economic impact study on the closure of these post offices and ensure that rural America does not bear an undue burden.

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